

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

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Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Roberto Rivera

Serial No. 78588393

Kurosh Nasserri of Kurosh Nasserri PLLC for Roberto Rivera.

Julie A. Watson, Trademark Examining Attorney, Law Office
109 (Dan Vavonese, Managing Attorney).

Before Hohein, Walters and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Roberto Rivera seeks registration on the Principal
Register of the following mark:



for goods identified in the application as a "series of pre-recorded audio and video tapes, compact discs and vinyl records, all featuring music."¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register applicant's mark based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney asserts that applicant's mark, when used in connection with the identified goods, so resembles the trademark **JEWCY** (*in standard character format*) in two registrations owned by the same party, registered in connection with:

"entertainment, namely, live variety, drama and comedy performances featuring live and recorded music" in International Class 41;²

and

"phonograph records featuring music, variety, drama and comedy performances; pre-recorded audio cassettes and compact discs featuring music, variety, drama and comedy; pre-recorded video tapes and DVDs featuring

¹ Application Serial No. 78588393 was filed on March 16, 2005 based upon applicant's allegation of first use anywhere and first use in commerce at least as early as February 1, 1998. No claim is made to the word "Music" apart from the mark as shown. The mark consists in part of the stylized letters "JM."

² Registration No. 2843648 issued to Jewcy Partners, LLC on May 18, 2004 based upon an application filed on July 24, 2002 claiming first use anywhere and first use in commerce at least as early as June 2002.

music, variety, drama and comedy performances" in International Class 9,³

as to be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney submitted briefs. We reverse the refusal to register.

In arguing against registrability, the Trademark Examining Attorney points out that applicant has conceded that his goods overlap the goods of registrant and that his goods and the registrant's recited services are of a kind that may emanate from a single source. The Trademark Examining Attorney goes on to argue that the word "Juicy," as the dominant element in applicant's mark, is phonetically equivalent to registrant's mark; that the different spellings (JEWCY vs. JUICY) in the marks does not obviate the likelihood of confusion; that applicant's inclusion of the generic word MUSIC and a design element in his mark does not change the overall commercial impression thereof from that of the registrant's mark; and that registrant would be free to display its mark in a fashion similar to that of applicant.

³ Registration No. 2867423 issued to Jewcy Partners, LLC on July 27, 2004 based upon an application filed on July 24, 2002 later claiming first use anywhere and first use in commerce at least as early as December 7, 2002.

By contrast, applicant contends that it is highly unlikely that confusion will result between the cited mark and applicant's mark based upon a comparison of the marks in their entireties as to appearance, sound, connotation and commercial impression.

Likelihood of Confusion

We turn, then, to resolution of the issue of likelihood of confusion. Our determination is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key, although not exclusive, considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The goods and services

We turn first to the *du Pont* factor focused on the relationship of the goods as identified in the application and the goods and services in the cited registrations.

As pointed out by the Trademark Examining Attorney, applicant has conceded that its goods overlap the goods of registrant and that its goods and the registrant's recited services are of a kind that may emanate from a single source. Accordingly, this *du Pont* factor supports the position of the Trademark Examining Attorney, as do the related factors focused on the respective channels of trade and the conditions of sale and classes of customers.

The marks

We look next at the similarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

The Trademark Examining Attorney argues that inasmuch as the dominant element in applicant's mark, namely, the word JUICY, is phonetically equivalent to registrant's

JEWCY mark, the different spelling of the terms (JEWCY vs. JUICY) does not obviate the likelihood of confusion.

In response, applicant contends the marks are quite different as to appearance, sound, connotation and commercial impression:

First, comparing the Applicant's mark to the cited mark visually, it is readily apparent that the two marks do not look the same. The word portions of the marks, namely "juicy music" and "jewcy" are spelled differently and consist of a different number of words. The additional word incorporated into the Applicant's mark, music, is an informative word that distinguishes the appearance of the marks. In addition, the Applicant's mark incorporates a distinct design element that further distinguishes the marks in appearance.

Second, the Applicant's mark, JUICY MUSIC (and Design), does not sound like the cited mark, JEWCY. The additional word incorporated into the Applicant's mark, music, makes the marks sound different from each other. Even assuming that the word "juicy" is the dominant portion of the Applicant's mark, as noted above the addition of the word "music" cannot be ignored in determining the question of likelihood of confusion. Indeed, the marks in the cases cited by the Examining Attorney in the Second Office Action are distinguishable from the marks in the present case in that the former consists of marks that are virtually phonetically the same whereas the latter consists of marks that clearly sound different from each other when spoken unless the word "music" is completely ignored. See, *RE/MAX of America, mc, v. Realty Mart, Inc.*, 207 USPQ 960 (TTAB

1980) (comparing REMACS and RE/MAX); *Molenaar, Inc. v. Happy Toys, Inc.*, 188 USPQ 469 (TTAB 1975) (comparing FINGERMAGIC and RINGAMAJIGS); *In re Cresco Mfg. Co.*, 138 USPQ 401 (TTAB 1963) (comparing CRESCO and KRESSCO).

Finally, the marks project significantly different commercial impressions. First, the addition of the word "music" does add to the overall commercial impression of the Applicant's mark. The Applicant's mark, JUICY MUSIC (and DESIGN), connotes *music* which is filled with energy, life and excitement. On the other hand, the cited mark, JEWICY, does not convey any sort of impression involving music. Rather, the cited mark imparts the impression of unspecified goods and services which are to a high degree Jewish in nature or bountiful with Jewish culture.

Even assuming that the dominant portion of the Applicant's mark may be more significant in creating a commercial impression, "juicy" and "jewcy" convey different commercial impressions. Specifically, "jewcy" as used in the cited mark is not merely a casual variation in the spelling of the word juicy. Rather, the cited mark draws on a distinct characteristic of prospective purchasers: that of being a member of a race of people whose traditional religion is Judaism. Accordingly, while both marks share the phonetically similar portions "juicy" and "jewcy," the marks are perceived by relevant consumers in a completely different fashion. The overall impression of the respective marks, including appearance and sound, make the likelihood of any confusion as to the origin or affiliation of the Applicants and registrants goods and services remote.

Applicant's brief, p. 3.

As to appearance, we agree with applicant that the prominent design feature in applicant's mark (e.g, the highly stylized letters "JM") serves to distinguish applicant's mark visually from registrant's mark.



JEWICY

As to sound, the Trademark Examining Attorney is correct in noting that registrant's mark is phonetically identical to the dominant literal term in applicant's mark. However, again we agree with applicant that the literal elements of both marks, JUICY MUSIC and JEWICY, project distinct connotations, and those connotations are quite different from each other. In fact, the differences in commercial impressions are so significant that we find there to be no confusing similarity in spite of the phonetic equivalence of "juicy" and "jewcy."

Therefore, in balancing all the relevant *du Pont* factors, we find that there is no likelihood of confusion herein in spite of the close relationship of the goods and services.

Decision: The refusal to register under Section 2(d) of the Lanham Act is hereby reversed.